

Statement of the Case.

same were not leased by the defendant or held by him as tenant of the plaintiff. The testimony further showed that, from the time defendant obtained the lease of the State until the date of the trial, the stock owned or controlled by him was more than sufficient to consume the grass on the plaintiff's lands, and the sections alternating therewith leased by the defendant from the public school fund. Defendant not only pastured his own stock upon these lands, but 3500 head of cattle owned by one Evans, for which he received \$5000 the first year, and for the remaining period up to the year 1889, when he purchased them, \$1.65 per head, as well as \$2500 for the pasturage of 3000 calves belonging to another party.

These facts certainly showed an intent on the part of the defendant to avail himself of the pasturage of plaintiff's lands, and fully authorized the instruction of the court to the jury that, if the defendant overstocked the enclosure, he should be held liable to the plaintiff for the rental value of the lands. In such case the law raises an implied promise to pay a reasonable sum for the use and occupation of the lands, even though negotiations for a new lease had proven unsuccessful. *Schuyler v. Smith*, 51 N. Y. 309.

There was no error in the action of the court below, and its judgment is, therefore,

*Affirmed.*

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ROWE v. PHELPS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF TEXAS.

No. 237. Argued and submitted February 1, 1894. — Decided March 5, 1894.

There being no assignment of errors, as required by Rev. Stat. § 997, and no specification of errors required by Rule 21, this case is dismissed.

THIS was, as in the preceding case, an action by the defendant in error to recover the rental value of certain sections of land alleged to have been depastured by the plaintiffs in error, constituting the firm of Rowe Bros.

## Statement of the Case.

Upon the trial of the case the jury returned a verdict for the plaintiff in the sum of \$7739, for which judgment was entered, and defendant sued out this writ of error.

*Mr. M. L. Crawford*, for plaintiff in error, submitted on his brief.

*Mr. Leigh Robinson* for defendant in error.

MR. JUSTICE BROWN, after stating the case, delivered the opinion of the court.

There is no assignment of errors sent up with the record in this case, as required by Rev. Stat. § 997, and no "specification of the errors relied upon," as required by Rule 21 of this court. This rule requires that the specification "shall set out separately and particularly each error assigned and intended to be urged," and there is no such "plain error not assigned or specified," as calls upon the court to exercise its option to review the questions involved. It would seem that unless the statute and rule are to be entirely disregarded, this writ of error must be

*Dismissed.*

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GUMAER *v.* COLORADO OIL COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF COLORADO.

No. 50. Argued October 24, 1893. — Decided March 5, 1894.

The court being unable, in any view that it can take of the evidence, to reconcile the conflicting testimony of the witnesses respectively examined in behalf of the parties, holds that the evidence fails to show that the complainant is entitled to the relief prayed for.

THE Colorado Oil Company, describing itself as a corporation organized and existing under the laws of New York, brought its bill in equity in the Circuit Court of the United